

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-2111

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 75-2111

UNITED STATES OF AMERICA

vs.

VICTOR DANENZA,

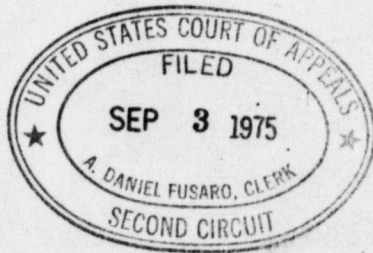
Appellant.

On Appeal from Judgment of Civil Contempt; S. D. N. Y.

APPELLANT'S APPENDIX

KOSTELANETZ, RITHOLZ & MULDERIG

80 Pine Street
New York, New York
212/HA 2-4030



PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

N/ 11-188

-----x
IN RE VICTOR DANENZA :

A WITNESS BEFORE THE :

ORDER

GRAND JURY :
-----x

Upon the application of Mark A. Speiser, Special Attorney, United States Department of Justice, it appears to the satisfaction of the Court:

1. On various dates between February , 1975 and April 18, 1975, United States Marshals have made repeated efforts to serve VICTOR DANENZA, 155 East 55th Street, Penthouse C, New Yor, New York with a Grand Jury Subpoena Duces Tecum requesting him to appear and produce certain corporate documents necessary for an investigation being conducted by the Grand Jury of the United States presently empaneled within this District; and
2. These corporate documents specified in the attached subpoena are under the sole dominion and control of VICTOR DANENZA; and
3. VICTOR DANENZA, a United States citizen is currently residing at the Principessa Clotilta Hotel, Corso Porta Nuva #52, Milano, Italy;
4. NOW, THEREFORE, it appearing that the Government has exhausted all reasonable efforts to subpoena the corporate records of Triple Management Inc. by service and attempted service of subpoenas within the United States, it is hereby ordered pursuant to Rule 17(e)(2) of the Federal Rules of Criminal Procedure and Title 28, United States Code, Section 1763 that the attached subpoena be served directly on said VICTOR DANENZA, by the appropriate official of the American Consulate in Rome, Italy, or through the appropriate Italian official in accordance with the requirements of Italian Law.

2.
It is further ordered that VICTOR DANENZA be
tendered the fare necessary to procure a one way ticket between
Milano, Italy and New York, New York together with \$36
representing one day's witness fee. If necessary the United
States Marshals shall pay DANENZA \$36 a day for each
additional day DANENZA is required to appear before the
GRAND JURY.

Dated: New York, New York

W. J. [Signature]
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA :

-v- :

ORDER TO SHOW CAUSE

VICTOR DANENZA, :

Defendant. :


-----X
On the annexed affidavit of MARK A. SPEISER,
Special Attorney, United States Department of Justice,

IT IS HEREBY ORDERED that VICTOR DANENZA appear
before the United States District Judge presiding in Room
506, United States Courthouse, at Foley Square, in the city
and county of New York on the 1st day of July, 1975 at
10 o'clock in the fore noon and show cause why he
should not be held in contempt of this court for failing
to appear before a duly constituted Grand Jury in and for
the Southern District of New York, and why this court should
not grant the United States of America such other and
further relief as may be proper.

IT IS FURTHER ORDERED that service of this Order by
personally delivering a copy of the same with attachments
to Kostelanetz, Ritholz & Mulderig, Esqs., 80 Pine Street,
New York, New York, attorneys for said VICTOR DANENZA, and
by mailing a copy of same to VICTOR DANENZA at the address
where he was served the subject Grand Jury Subpoena, to wit,
Residence Principessa Clotilde, Corso di Porta Nuova 52,
Milano, Italy not later than June 12, 1975 at 2:00 p.m.
shall be deemed good and sufficient service.

Dated: New York, New York

June 11th 1975


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA :

-v- :

AFFIDAVIT

VICTOR DANENZA, :

Defendant. :

-----X
County of New York:
State of New York:

MARK A. SPEISER, being duly sworn, deposes and says:

1. I am a Special Attorney with the United States Department of Justice and am assigned to the disposition of the above captioned matter.

2. VICTOR DANENZA is a United States citizen currently residing at the Residence Principessa Clotilde, Corso di Porta Nuova 52, Milano, Italy.

3. Upon my application as a Special Attorney for the United States Department of Justice, the Honorable Lawrence W. Pierce, United States District Judge signed an order pursuant to Rule 17(e)(2) of the Federal Rules of Criminal Procedure and Title 28, United States Code, Section 1783, directing the service of a Grand Jury Subpoena Duces Tecum on VICTOR DANENZA by the appropriate official of the American Consulate in Rome, Italy or through the appropriate Italian official in accordance with the requirements of Italian law. A copy of the subpoena which required DANENZA to appear before the Grand Jury on May 28, 1975 at 2:00 p.m. is annexed hereto as Exhibit "A".

4. I have been advised by Luciano Mangiafico, Vice Consul for the consular district of Milano, Italy that DANENZA was served by Serra Livio, the Adjutant Judicial Official in accordance with Article 139 of the Italian Civil Procedure Code which specifies the procedure for personal service of a subpoena. A copy of Article 139 and a translation thereof are

2.

attached hereto as Exhibit "B". Article 139 indicates when personal service is not possible, delivering of the subpoena to the concierge of the building where the addressee lives will constitute effective service. Mr. Livio, in an affidavit, states he served the subpoena to Ermes Pilate, the concierge of the Residence Principessa Clotilde on May 22, 1975. A copy of Mr. Livio's affidavit and translation thereof are annexed hereto as Exhibit "C".

5. In a letter dated May 21, 1975 and annexed hereto as Exhibit "E", Frederick H. Hassett, American Consul, Milano, Italy advised DANENZA he would be provided with a one way air ticket from Milano, Italy to New York, New York and \$36 cash per diem.

6. In an affidavit annexed hereto as Exhibit "D", Mr. Mangiafico states he had a telephone conversation with DANENZA on May 27, 1975 in which DANENZA acknowledged the contents of the subpoena but stated his intention not to appear before the Grand Jury based on his belief that he had not been personally served with the subpoena. According to the affidavit DANENZA then refused to appear at the Consulate to be served by Mr. Mangiafico with the subpoena. According to Italian law, American officials can only serve a subpoena upon a United States citizen at the Consulate office.

7. On May 28, 1975, the day on which DANENZA was commanded to appear before the Grand Jury, he did not appear at 2:00 p.m. as directed, nor did he appear at any time on that day. In addition, no further communication was received from DANENZA on May 28, 1975, nor at any time thereafter, either explaining his failure to appear, or indicating a willingness to attend at sometime in the future.

8. The Government respectfully requests that VICTOR DANENZA be ordered to appear before this Court to show cause why he should not be held in contempt for his failure to attend the Grand Jury proceeding of May 28, 1975 in disregard of the aforesaid subpoena, duly and lawfully served upon his person.

3.

9. No previous application for an Order to Show Cause
in this matter has been made.

WHEREFORE, I respectfully request that this Court
enter the attached Order.

Mark A. Speiser
MARK A. SPEISER
Special Attorney
United States Department of Justice

Subscribed and sworn to
before me this 10th
day of June 1975

Carl M. Bornstein
CARL M. BORNSTEIN
Notary Public, State of New York
No. 31-0359368
Qualified in New York County??
Commission Expires March 30, 1977

United States District Court

SOUTHERN DISTRICT OF NEW YORK

"A"

TO VICTOR DANENZA
Principessa Clotilta Hotel
Corso Porta Nuova 452
Milano, Italy

GREETING:

WE COMMAND YOU that all business and excuses being laid aside, you appear and attend before the GRAND INQUEST of the body of the people of the United States of America for the Southern District of New York, at a District Court to be held at Room 1404 in the United States Court-house, Foley Square, in the Borough of Manhattan, City of New York, on the 28th day of May 1975, at 2:00 o'clock in the afternoon, to testify and give evidence in regard to an alleged violation of Title 18 U.S.C. Section 371
Title 26 U.S.C. Section 7201
Title 15 U.S.C. Section 77(e) 1964

and not to depart the Court without leave thereof, or of the United States Attorney, and that you produce at the time and place aforesaid the following:

All books and records, including but not limited to the stock ledgers, cash receipts and cash disbursements books, brokerage account statements and all other corporate documents of each of the following corporations:

Triple Management, Inc.
Penn Group, Inc.
Fortex Fund, Inc.
Chardan, Inc.
Kenth Associates, Inc.
Alpark Group, Inc.

And for failure to attend and produce the said documents you will be deemed guilty of contempt of Court and liable to penalties of the law.

DATED: NEW YORK, N. Y. May 1, 1975

Raymond F. Burghardt

Clerk.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York.

NOTE: Report at Room 450. In order to secure your witness fees and mileage, it is necessary that you retain this Subpoena and present the same at the United States Attorney's Office, Room 450, upon each day on which you attend Court as a witness.

Assistant MARK SPEISER
Special Attorney
(212) 791-1127

U. S. Department of Justice
Organized Crime Strike Force
Room 1307, 26 Federal Plaza
New York, New York

l'ufficio o l'azienda, e, quando anche il portiere manca, a un vicino di casa che accetti di riceverla.

Il portiere o il vicino deve sottoscrivere l'originale, e l'originale può farlo dirottamente al destinatario dell'invio, o al funzionario dell'ufficio, o al funzionario dell'azienda, o al funzionario della casa, o al funzionario della lettera raccomandata.

Se il destinatario vive abitualmente a bordo di una nave mercantile, l'atto può essere consegnato al capitano o al comandante della nave.

Se il destinatario vive attualmente a bordo di una nave mercantile, l'atto può essere consegnato al capitano o a chi ne fa le veci.

140. Irreperibilità o rifiuto di ricevere la copia. — Se non è possibile eseguire la consegna per irreperibilità o per inopporibilità o rifiuto delle persone indicate nell'articolo presidente, ufficiale giudiziario deposita la copia nella casa del comarca dove la notificazione deve essere affissa, affigge avvisi e

Art. 48. Avviso al destinatario della notificazione. — L'area primitiva nell'art. 140 del codice deve contenere:

1) il nome della persona che ha chiesto la notificazione e del destinatario.

- 2) l'indicazione della natura dell'atto notificato;
- 3) l'indicazione del giudice che pronuncerà il provvedimento licitato o davanti al quale si compirte con la data e l'ordine di comparizione;
- 4) la data e la firma dell'istitutore.

... ..

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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2. 11. 1951

1

14.2. Notificazione a persona di residenza, allora e domicilio sconosciuti. — Se non sono conosciuti la residenza, la domicilia (43 c. c.) e il domicilio del destinatario (non vi è il precetto di ricerca del domicilio), il notificatore brevilo nell'art. 7 l'uffe

ficile giudiziario come in
tizzazione mediante ricorso ul
coria dell'atto nella casu comu
nale dell'ultima residenza o, se
questo è ignota, in quella del
luogo di nascita del destinatario,
e mediante affissione di si-
tra copia nell'albo dell'ufficio
giudiziario davanti al quale si
procede.

Nel caso previsto nel presente articolo la notificazione si fa per espressa dichiarazione del ventiduesimo giorno successivo a quello in cui sono compiute le formalità prescritte.

co ministero, insieme con la copia dell'atto, una nota contenente:

- 1) l'indicazione del nome e della qualità della persona che ha richiesto la notificazione;
- 2) il nome, la residenza e la dimora del destinatario;
- 3) la natura dell'atto notificato;
- 4) il giudice che ha pronunciato il provvedimento notificato.

La nota deve essere compilata durante il corso delle operazioni.

3) la data e la firma dell'ufficio giudiziario.

La nota è trasmessa dal pubblico ministero insieme con l'atto al sostituto degli affari esteri o al comandante militare posto nella circoscrizione del tribunale, il quale provvede d'urgenza alla consegna.

ind.

[illegible]

一、二、三、四、五、六、七、八、九、十、十一、十二、十三、十四、十五、十六、十七、十八、十九、二十、二十一、二十二、二十三、二十四、二十五、二十六、二十七、二十八、二十九、三十、三十一、三十二、三十三、三十四、三十五、三十六、三十七、三十八、三十九、四十、四十一、四十二、四十三、四十四、四十五、四十六、四十七、四十八、四十九、五十、五十一、五十二、五十三、五十四、五十五、五十六、五十七、五十八、五十九、六十、六十一、六十二、六十三、六十四、六十五、六十六、六十七、六十八、六十九、七十、七十一、七十二、七十三、七十四、七十五、七十六、七十七、七十八、七十九、八十、八十一、八十二、八十三、八十四、八十五、八十六、八十七、八十八、八十九、九十、九十一、九十二、九十三、九十四、九十五、九十六、九十七、九十八、九十九、一百。

[illegible]

Sworn to before me this _____ day of _____, 19____.

2 A-8

Art. 139 Italian Civil Procedure Code

Service of subpoena (Judicial acts) at the legal residence, at the living place or at the business place of a person.

If the act is not served according to the dispositions of the preceding article,** the servicing has to be performed in the municipal district of legal residence of the addressee, looking for him in his home or where he has his office or he operates his business.

If the addressee is not found in any such place, the judicial officer delivers a copy of the act to a relative residing at the same address, or to one of his employees at his home or business place, provided such person is not under 14 years of age or openly incapable.

In the absence of the above mentioned persons, the copy of the act is delivered to the concierge of the building where the addressee lives, or where his office or his business is located, and, when also the concierge is not available, the copy is delivered to a neighbour who is willing to accept it.

The concierge or the neighbour must subscribe the original and the judicial officer notifies the addressee of the service performed by means of a registered letter.

If the addressee usually lives aboard a ship, the act can be delivered to the captain or to whomever acts in such capacity.

When the municipal district where the addressee has his legal residence is unknown, the servicing is made in the district where he usually lives and, if this is unknown too, in the district where he operates his business, observing, as far as possible, the above stated dispositions.

** Translator's note: Art. 138 talks about personal service to the party in question.

And deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

Subscribed before me this

day of _____, 19____

A-9

DECLARATION

I, the undersigned Luciano Mangiafico
residing at Milan, Italy under oath, swear that

I well understand both the English and Italian
languages and that the annexed is a true and faith-
ful translation made by me.

Luciano Mangiafico
(translator)

Republic of Italy
Province of Milan
City of Milan
Consulate General of the
United States of America.)

SS:

SUBSCRIBED AND SWORN TO BEFORE ME THIS 30th
DAY OF May 1975

Robert P. Gould
American Consul, Milan,
Italy.

And deponent further says that he sealed the said envelope and placed the same in the mail chute
for mailing in the United States Courthouse, Foley Square, Borough of Manhattan, City of
New York.

Subscribed before me this

day of

19

A-10

di R.G. PROCURA della REPUBBLICA
MILANO

Cron. N° 11

CORTE DI APPELLO DI MILANO
Ufficio Unico delle Notificazioni

"C"

Richiesto come in atti, io sottoscritto aiutante ufficiale giudiziario addet-
to all'intestato Ufficio, ho notificato a:

Sig. Victor DANENZA

"Residence Principessa Clotilde"

C.so di Porta Nuova n.52 - MILANO

copia dell'allegato atto estero

mediante consegna fattane nell'indicata residenza in Milano, a mani

Portiere Romeo Pileti
che si incarica della consegna esso
destinatario al momento assente.

[Firma]
firma del ricevente

(eventuale firma del portiere)

MILANO

LI 22 MAG. 1975

L'AUTANTE UFFICIALE GIUDIZIARIO

(SERIO LIVIO)

Nota cartella, a cura di una delle parti, io sottoscritto aiutante ufficiale giudiziario
dell'avvenuta notificazione dell'atto a carico dell'interessato L.
Stabilito da Milano 25.

1257

And deposited with me
drop for mailing to the
New York

A-11

May 1975

No. 1261/1315

DISTRICT ATTORNEY'S OFFICE OF THE REPUBLIC
MILAN

COURT OF APPEALS OF MILAN
NOTIFICATION OFFICE

As required by documents, I undersigned Adjutant Judicial Official
employed at the above office, have notified to

Mr. Victor DANENZA
"Residence Principessa Clotilde"
Corso di Porta Nuova 52, Milano

copy of the attached foreign document by giving it at the above
address in Milan to the concierge Ernes Pilati who takes responsi-
bility for its delivery to the addressee, momentarily absent.

(Ernes Pilati)
signature of receiver

Milan
22 May 1975
The Adjutant Judicial Official
(Serra Livio)

Given notice, in accordance with Chapter 2 of article 109 Civil Pro-
cedure Code to the addressee of the delivery of the document by means
of registered letter No.73 from Milan on May 24, 1975

And deponent further says that he sealed the said envelope and placed the same in the mail chute
drop for mailing in the United States Courthouse, Foley Square, Borough of Manhattan, City of
New York.

in to before me this

day of

12
A-12

DECLARATION

I, the undersigned Luciano Mangiafico
residing at Milan, Italy under oath, swear that
I well understand both the English and Italian
languages and that the annexed is a true and faith-
ful translation made by me.

Luciano Mangiafico
(translator)

Republic of Italy
Province of Milan
City of Milan
Consulate General of the
United States of America.)

SS:

SUBSCRIBED AND SWORN TO BEFORE ME THIS 30th
DAY OF May 1975

Robert P. Gould
Robert P. Gould
American Consul, Milan,
(Italy.)

And deponent further says that he sealed the said envelope and placed the same in the mail chute
drop for mailing in the United States Courthouse, Foley Square, Borough of Manhattan, City of
New York.

Sworn to before me this

day of

19

A-13

REPUBLIC OF ITALY
PROVINCE OF MILAN
CITY OF MILAN
CONSULATE OF THE UNITED STATES OF AMERICA

"D"

) ss

IN RE VICTOR DANENZA
WITNESS BEFORE THE GRAND JURY

AFFIDAVIT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Before me Robert P. Gould, Consul of the United States of America, in and for the consular district of Milan, duly commissioned and qualified, personally appeared Luciano Mangiafico who, being duly sworn, deposes and says as follows:

MY NAME IS: LUCIANO MANGIAFICO
I WAS BORN AT: Siracusa, Italy
ON: December 23, 1938
I AM RESIDING AT: Via Magnasco 6, Milano, Italy
MY LEGAL RESIDENCE IN THE UNITED STATES IS: 56 Whitmore St.,
Hartford, Connecticut.

I am employed by the United States Government as a Vice Consul for the consular district of Milan. On Tuesday May 27, on or about 2:30 p.m., I received a telephone call from Mr. Victor Danenza, a United States citizen on whom a subpoena issued by the United States District Court, Southern District of New York, had been served by the Italian authorities. Mr. Danenza told me that he was calling to inform this office that the subpoena had not been served on him directly but left with the concierge at his residence. He also said that the concierge had placed it in his mailbox. I told Mr. Danenza that I believed such procedure to be legal under the Italian Code and he again stressed that the subpoena had not been served on him personally. I then informed Danenza that I would be willing to serve another copy of the subpoena on him if he would appear at the Consulate. Mr. Danenza declined by saying "No, no" and, after thanking me and indicating he would phone again, ended the conversation.

AND FURTHER DEPONENT SAITH NOT.

Luciano Mangiafico
firma

Subscribed and sworn to before me this 30 day of May 1975.

[Signature]
Consul of the United States
of America

And deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

Subscribed and sworn to before me this

day of

19

A-14

CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA
Milan, Italy

May 21, 1975

"E"

Mr. Victor Danenza
Residence Principessa Clotilde
Corso di Porta Nuova 52
20121 Milano

Dear Mr. Danenza:

In reference to the attached subpoena, you are advised to inform this office, at your earliest opportunity, of your departure date for the United States.

In accordance with the Court order, the Consulate General will provide you with a one way air ticket from Milan to New York and with \$ 36 cash per diem.

Sincerely yours

Frederick H. Hassett
Frederick H. Hassett
American Consul

And deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

Subscribed and sworn to before me this

day of _____, 19____

Copy Received
9/3/75

William J. Rensel
Attorney General
Joint State Force (S.D.N.Y.)